IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 274 OF 1995

Shri. Gurunath Shantaram Chavan,
aged 30 years, Occ. Blacksmith,
residing at Kalamb village,
Taluka Karjat, Dist. Raigad ...Appellant

Versus

The State of Maharashtra ...Respondent

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Shri. B.N. Lad, Advocate for the appellant.

Shri. K.V. Saste, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 8TH SEPTEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant (accused No.1) challenges the judgment and order dated 21.6.1995 passed by the learned Sessions Judge, Raigad-Alibag in Sessions Case No.114 of 1994. By the said judgment and order, the appellant has been convicted for the offence punishable U/sec. 306 and 498-A of I.P.C. and sentenced to undergo R.I. for five years and to pay fine of Rs.2000/- i/d R.I. for six months on both the counts.

. It may be mentioned here that alongwith the

appellant, two other co-accused persons i.e. Sou. Rukhminibai Shantaram Chavan and Kum. Chitra Shantaram Chavan, the mother and sister of the appellant respectively were also charged for the offence under Sections 306 and 498-A r.w. 34 of I.P.C. However, both these accused persons i.e. original accused Nos. 2 and 3 were acquitted by the impugned judgment.

2. Briefly stated, the prosecution case is as under:-

. The appellant was the husband of deceased Geetabai @ Mangala, the original accused No.2 and 3 i.e. Sou. Rakhminibai and Kum. Chitra, were the mother-in-law and sister-in-law of deceased Geetabai. The marriage of Geetabai with the appellant was solemnised on 15.5.90. Thereafter, Geetabai went to reside with the appellant and his family members at village Kalamb, Taluka Karjat, District Raigad.

. P.W.2 Haribhau Khandagale was the father of deceased Geetabai, P.W.3 Pradeep Kahndagale was the brother of deceased Geetabai. It is the prosecution case that in the matrimonial house, Geetabai was ill-treated and she was being beaten by the appellant as she could not bear a child. In

fact in the night of 26.5.93 and in the morning of 27.5.93 Geetabai was beaten and sent by the appellant to her parental home. When Geetabai arrived at the parental home, she informed her parents that she was beaten by the appellant and sent to the parental home. On 29.5.93 on account of persuasion by P.W.6 Vasant Vyapari, P.W.2 Haribhau-the father of Geetabai and P.W.3 Pradeep-the brother of Geetabai, Geetabai went to her matrimonial home.

. On 2.6.93 Geetabai left her matrimonial home early in the morning and jumped in the river and thus committed suicide. Her dead body was seen floating in the river on 3.6.93. Thereafter, the appellant went to the police station and lodged F.I.R. (Exh.23) at outpost police chowki Kalamb. P.S.I. P.W.7 Sanjiv Pimple took up the investigation.

. The dead body was forwarded for post mortem. In the opinion of the doctor, the death was caused due to asphyxia due to drowning. Thereafter, P.W.2 Haribhau Khandagale i.e. the father of Geetabai lodged F.I.R. at Nerul police station. On the basis of the said F.I.R. C.R. No. 28/93 came to be registered for the offence under Sections 498-A and 306 r.w. 34 of I.P.C. against the three

accused persons. Thereafter, investigation commenced. During the course of investigation, statements of various witnesses came to be recorded including P.W.3 Pradeep Kahndagale, P.W.4 Chandrakant Khandagale, P.W.5 Dnyaneshwar Khandagale and P.W.6 Vasant Vyapari. All these witnesses have stated that Geetabai committed suicide due to the ill-treatment meted out at the hands of accused persons. After completion of investigation, charge sheet came to be filed.

3. The case was committed to the Court of Sessions in the usual manner. The charge came to be framed against appellant i.e. original accused No.1 and original accused Nos. 2 and 3 for the offence under sections 306 and 498-A r.w. 34 of I.P.C. All the accused pleaded not guilty to the said charges and claimed to be tried. The defence of the appellants is that of total denial and false implication. One defence witness has been examined i.e. Rajaram Waman Mankame on behalf of the accused persons.

4. During the trial in all the prosecution has examined seven witnesses. It may be mentioned here that there is no eye witness to the incident and the case is based on the circumstantial evidence. The learned Trial Court after considering the

evidence adduced by the prosecution sentenced the appellant in the manner stated in para 2. As mentioned in the said para, the learned Sessions Judge acquitted the co-accused i.e. original accused Nos. 2 and 3 i.e. Sou. Rukhminibai and Kum. Chitra, the mother and sister of the appellant respectively.

5. I have heard Mr. Lad, the learned advocate for the appellant and Mr. Saste, the learned A.P.P. for the respondent-State. I have also gone through the entire evidence on record and the impugned judgment and order. I am constrained to observe that I do not find any merit in this appeal and in my opinion it deserves to be dismissed.

6. As mentioned earlier, the case rests on circumstantial evidence. On perusal of evidence of seven witnesses examined by the prosecution, following circumstances appear against the appellant:-

1. The marriage of deceased Mangala @ Geeta was solemnized on 15.5.90 at village Vaijanath.

2. Mangala @ Geeta died as a result of

suicidal death in between 2.6.93 and 3.6.93 by jumping into the river and her dead body was detected in the river on 3.6.93

3. The death of Mangala has been caused within seven years from the date of her marriage and thus would attract the presumption under Section 113-A of the Indian Evidence Act.

4. Deceased Mangala @ Geeta could not bear a child and this circumstance is proved through the evidence of P.W.5 and P.W.1.

5. Deceased Mangala was subjected to ill-treatment and this circumstance is proved through the evidence of P.W.2 Haribhau Khandagale, P.W.3 Pradeep Khandagale, P.W.4 Chandrakant Khandagale, P.W.5 Dnyaneshwar Khandagale and P.W.6 Vasant Vyapari.

6. Deceased Mangala was also beaten at the hands of appellant in the night of 26.5.93 and in the morning of 27.5.93 and then she was sent to parental

home, in the morning on 27.5.93. This circumstance is proved through the evidence of P.W.2, P.W.3, P.W.4 and P.W.6.

7. Deceased Mangala was pacified and she was reached in the matrimonial home on 29.5.93. This circumstance is proved through the evidence of P.W.2, P.W.3 and P.W.6.

8. The appellant had made extra judicial confession before P.W.6 about the ill-treatment to Mangala @ Geeta.

9. The deceased Mangala had written a chit (Exh.12) to her father and mother in which she had disclosed about her husband beating her. This chit has been proved through the evidence of P.W.1, P.W.2, P.W.3 and P.W.7.

7. The fact that the marriage of deceased Geetabai with the appellant was solemnized on 15.5.1990 has not been disputed by the appellant. So also the fact that Geetabai left the matrimonial home on 2.6.93 and her dead body was seen in the river on

3.6.1993 is not disputed. The fact that Geetabai died due to asphyxia and drowning is also not disputed by the appellant. The marriage of Geetabai with the appellant took place on 15.5.90 and the dead body of Geetabai was found on 3.6.1993 i.e. within seven years from the date of her marriage. In such case the presumption under Sections 113-A of the Indian Evidence Act would be attracted.

8. From the evidence of prosecution witnesses it has come on record that Geetabai was subjected to beating and ill-treatment by the appellant. The prosecution has examined P.W.2 Haribhau, the father of Geetabai. Haribahu has stated that the marriage of his daughter with the appellant took place on 15.5.90. After the marriage the appellant started beating his wife Geetabai i.e. daughter of this witness. On 27.5.93 or 28.5.93, the appellant beat Geetabai and sent her to the house of her parents. Thus Geetabai arrived at their house. On arrival, Geetabai told them that she was beaten by the appellant and sent to the parental house. On 29.5.93, this witness had sent his daughter Geetabai back to her matrimonial house. On 3.6.93 one person had come to the house of this witness at about 12.30 p.m. and informed that their daughter was missing from her matrimonial house.

Thereafter, they went to trace Geetabai. On the same day it was informed to this witness that his daughter was dead, hence he lodged F.I.R. with the police which is at Exh.16. This witness has further stated that prior to the death of Geetabai one chit (Exh.12) was received by him. This chit had been sent to him by his daughter. He has stated that his daughter was educated upto the 9th Std. He himself is educated upto 5th Std. He had seen the handwriting of his daughter very often hence, he recognised the handwriting of his daughter. This witness has handed over this chit (Exh.12) to the police and the said chit came to be seized under panchanama Exh.11. Panch witness in respect of the said seizure is P.W.1 Sanjay Malusare. Nothing has been elicited in the cross examination of P.W.1 Sanjay Malusare or P.W.2 Haribhau Khandagale so as to discredit their testimony.

9. The evidence of P.W.2 Haribhau is corroborated by the evidence of P.W.3 Pradeep who is the brother of deceased Geetabai. This witness has also stated that the appellant used to beat his sister Geetabai and ill-treat her. His sister told them that she was being ill-treated mentally and physically and she was being beaten in the matrimonial home. On 27.5.93 his sister had come to their house. On

enquiry she told them that her husband beat her and sent her to the parental home. On 29.5.93 his sister was reached in her matrimonial home. On 3.6.93 they were informed that Geetabai was dead.

10. P.W.5 Dnyaneshwar who is the uncle of Geetabai has stated that in the month of November, 1992 when Geetabai met him, she told him that the appellant had ill-treated her. She also told him that she was beaten on the ground that she could not bear a child. On 28.5.93 this witness had gone to Chowk, at Chowk Geetabai told him that she was being ill-treated by the appellant. Thus the evidence of this witness also shows that Geetabai was being ill-treated by the appellant. Nothing has been brought out in the cross examination of P.W.5 Dnyaneshwar so as to discard his testimony.

11. Besides P.W.2, P.W.3 and P.W.5 who are relations of Geetabai @ Mangala, the prosecution has examined two independent witnesses i.e. P.W.4 Chandrakant Khandagale and P.W.6 Vasant Vyapari. P.W.6 Vasant Vyapari has stated that the appellant is the husband of the sister of his wife. He has stated that on 27.5.93 at about 2.30 p.m. the appellant came to his house. This witness asked the appellant as to why he had come to his house. The appellant informed him that he had beaten his

wife Geetabai and asked her to convey the same to her father and he had sent Geetabai to her parental home. The relation between the appellant and this witness was very close hence, the appellant had disclosed this fact to him. Thereafter, this witness had gone to Chowk and then pacified Geetabai and then Geetabai was sent to matrimonial house on 29.5.93. Vasant Vyapari made enquiry with Geetabai on 29.5.93 and she told this witness that she was ill-treated and beaten at the matrimonial house. The prosecution has also examined P.W.4 Chandrakant Khandagale. The sister of Chandrakant Khandagale is married to Arvind Chavan who is the real brother of the appellant. This witness has stated that on 11.5.93 he had gone to attend one marriage at the house of Dahelikar. The appellant and Geetabai met him in that marriage. Geetabai told him that she was being ill-treated and beaten in the matrimonial house. The appellant was present at that time. The appellant said to Geetabai that she may give message to her father that she was being beaten and ill-treated. This witness has further stated that on 27.5.93 Geetabai had come to Chowk at that time also Geetabai told him that she was being ill-treated and beaten at the matrimonial home. It is significant to note that P.W.4 Chandrakant and P.W.6 Vasant are both related to the appellant. Their relations with the

appellant was very close, in such case, there is no reason why both of them would falsely depose against the appellant. I find the evidence of both these witnesses to be cogent, reliable and trustworthy.

12. The learned advocate for the appellant has argued that in the present case only interested witnesses have been examined and no independent witnesses have been examined. He has submitted that though the statements of the persons residing in the village have been recorded however, they have not been examined by the prosecution and therefore, adverse inference deserves to be drawn. In this connection, it is pertinent to note that P.W.4 Chandrakant and P.W.6 Vasant are both independent witnesses. Nothing has been brought out in their evidence so as to discredit their testimony. So also nothing has been brought out on record that they were not of good terms with the appellant or that they have any reason to falsely implicate the appellant. The law is well settled that the prosecution is bound to produce only such witnesses who are essential for unfolding of the prosecution case. In other words, before an adverse inference against the prosecution can be drawn, it must be proved to the satisfaction of the Court that the witnesses who had been withheld were

eye witnesses, who had actually seen the occurrence and were therefore, material to prove the case. It is not necessary for the prosecution to multiply witnesses after witnesses on the same point. It is the quality rather than the quantity of the evidence that matters. Moreover, it is well known that third persons are very reluctant to get involved in criminal matters specially in matrimonial matters. Thus, in the present case it cannot be said that adverse inference can be drawn against the prosecution.

13. Besides the evidence of the witnesses referred to above, it has come on record that deceased Geetabai had written a chit (Exh.12) to her father in which she had disclosed the ill-treatment and beating by her husband. On perusal of chit (Exh.12) it is seen that Geetabai has mentioned therein that she was beaten by her husband. The recitals of the chit (Exh.12) clearly indicate that Geetabai was beaten by her husband on the ground that his sister Chitra was not duly honoured in the parental home of Geeta @ Mangala on 1.5.93 when Chitra had gone to Chowk to attend some marriage. Not only this the evidence of P.W.2 Haribhau who is father and evidence of P.W.3 Pradeep who is brother of deceased Geetabai also indicate that they had received the chit (Exh.12) from Geeta which is in

her hand-writing and recitals of the same have been duly proved from the evidence of these witnesses. P.W.1 Sanjay Malusare, P.W.2 Haribhau and P.W.3 Pradeep have identified the hand writing of Geetabai on the chit.

14. Shri. Lad, the learned advocate for the appellant has submitted that the chit is not bearing any date. He has submitted that the chit is a concocted document which can be seen from the fact that P.W.2 Haribhau states that the chit was brought to him by his nephew, however, he could not name the nephew. P.W.2 Haribhau has stated that the chit was given to him 4 to 5 days before the incident. However, P.W.3 Pradeep-brother of Geetabai states that the chit was brought by Arvind Chavan i.e. brother of the appellant on 26.6.93. In my view, the minor contradictions which are brought on record in the evidence of Haribhau and Pradeep are not so significant as to raise a doubt that the chit (Exh.12) was sent by Geetabai to her father a few days prior to her death. This contradiction is hardly of any consequences.

15. The learned advocate for the appellant has submitted that it cannot be said that the appellant is guilty of an offence under Section 306 or even 498-A of I.P.C. In support of this contention he

has placed reliance on the decision of the Supreme Court in the case of **State of Punjab Vs. Gurdip Singh and Ors. reported in (1996) 7 SCC 163.** In the said case the accused came to be acquitted under Section 306 of I.P.C. even though the witnesses have stated about the demand of dowry and ill-treatment on the ground that the letters written by the deceased to her parents do not indicate that she was physically or mentally tortured in her in-laws house. However, the facts in the said case and the present case being quite different. The said decision would be no help to the appellant.

16. Thereafter, the learned advocate for the appellant has placed reliance on the decision of the Supreme Court in the case of **Gananath Pattanaik Vs. State of Orissa reported in 2002 (1) Supreme 545**. In the case the accused came to be acquitted under Section 304 B and 498-A as there was no legal evidence to prove cruelty. The Supreme Court on perusal of the evidence found that there was no mention in the evidence of witnesses about the ill-treatment by the accused. In the said case the counsel for the respondent has fairly conceded that no witness had stated that deceased was not allowed to sit on the scooter by the accused and he was frequently staying absent in the house. However,

in the present case there is sufficient legal evidence on record to show that the appellant treated Geetabai in a cruel manner and he used to beat her frequently.

17. The next decision on which reliance has been placed by the learned advocate for the appellant is in the case of **Shivaji Janaba Patil & Ors. Vs. State of Maharashtra reported in 2004 Vol. 106 (1) Bom. L.R. 437.** In the said case the accused came to be acquitted as there was no evidence of harassment, ill-treatment and cruelty. It was further held that small bickering do not amount to ill-treatment. This case is distinguishable on facts from the present case.

18. Reliance has also been placed on the decision of this Court in the case of **Supchand Nathuji Lonare Vs. The State of Maharashtra reported in 1995 Cri.L.J. 3939.** In the said case the accused came to be acquitted under Section 306 and 498-A as the evidence of prosecution witnesses was not found to be reliable. However, in the present case, all the prosecution witnesses i.e. P.W.1 Sanjay Malusare, P.W.2 Haribhau Khandagale, P.W.3 Pradeep Khandagale, P.W.4 Chandrakant Khandagale, P.W.5 Dnyaneshwar Khandagale and P.W.6 Vasant Vyapari have been found to be reliable and trustworthy.

19. Reliance has also been placed on the decision of the Supreme Court in the case of **Taruna @ Gautam Mukherjee Vs. State of West Bengal reported in 2001 Cri.L.J. 4937 (SC).** In this case the Supreme Court acquitted the accused under Section 498-A and 306 of I.P.C. on the ground that what was stated by the witnesses in their evidence before the Court was not stated in their statements recorded by the police under Section 161 of Cr.P.C. In such case it was held that such material omissions discredit the version of the witness in Court. In the present case no such material omission has been brought on record in the evidence of any of the witnesses.

20. Lastly reliance has been placed by the learned advocate for the appellant on the decision of this Court in the case of **Khemraj Hiralal Agarwal Vs. The State of Maharashtra reported in 1995 Cri.L.J. 2271.** In this case, it was held that there was no evidence with regard to demand of money and ill-treatment of deceased. On the other hand the evidence shows that the brother of deceased had received financial and other help from the accused and members of his family. This decision is clearly distinguishable on facts from the present case.

21. The defence has examined one witness i.e. Rajaram Mankame. This witness has stated that the relations between the appellant and his wife were good and there was no ill-treatment to her in her matrimonial house. He has also stated that Geetabai was simple and whimsical. This witness is clearly an interested witness. Rajaram Mankame has admitted that he appeared as a witness at the instance of defence. He has further stated that he has good relations with the accused since their ancestors. This witness clearly has a direct interest in seeing that the appellant should get an acquittal as he is having very good relations with the appellant. From this fact, it is clear that he is an interested witness and thus, I do not find him to be a reliable and trustworthy witness.

22. While deciding whether a lady has been treated with cruelty by her husband the cultural temperament and state of life among them are factors from where the cruelty has to be inferred and it will depend on the facts of each case. The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her living with the husband will be harmful and injurious to her life. Therefore, to decide the question of cruelty the relevant factors

are the matrimonial relationship between the husband and wife, their culture and temperament, status in life, state of health, their interaction in their daily life which would provide insight on the aspect of cruelty.

23. The learned advocate for the appellant has submitted that there is no evidence relating to any proximate cause which would have caused Geetabai to commit suicide. However, on perusal of the evidence it is seen that Geetabai was being constantly ill-treated and beaten by the appellant on the ground that she could not bear a child. Just a couple of days before the incident she was beaten by the appellant and sent to her parental home. On 29.5.93 she was pacified and sent to her husband’s home. As to what happened within the four walls of the matrimonial house in the next couple of days, no outsider can say. Only the appellant and Geetabai know these details and Geetabai is dead. From the evidence of record it is obvious that the death was not an accidental death caused by falling into the river but it was a suicidal death. Considering the recitals of the spot panchanama (Exh.8) which was prepared on the spot coupled with the medical evidence, there is no difficulty in coming to the conclusion that Geetabai died as a result of suicidal death in

between 2.6.1993 and 3.6.1993 at village Kalamb and she died as a result of drowning. Therefore, the learned Sessions has rightly recorded the finding that it was a case of suicidal death. If everything was all right between the two, there was no reason for Geetabai to commit suicide. Considering the matrimonial relationship between appellant and Geetabai and their inter action in their daily life and the evidence of prosecution witnesses the only conclusion that can be reached is that Geetabai was being treated with cruelty in the matrimonial home and therefore, the presumption under Section 113 A of Evidence Act deserves to be drawn in this case. Even otherwise if the proof is excluded from consideration, there is enough material on record to reach the conclusion that the appellant ill-treated and beat Geetabai and thus, treated her with cruelty.

24. The material on record is sufficient to hold the appellant guilty for the offence under Sections 498-A and 306 of I.P.C. For the reasons aforesaid the conviction of the appellant under Sections 498-A and 306 of I.P.C. deserves to be maintained.

25. The learned Sessions Judge has imposed the sentence of five years R.I. for the offence under Section 306 of I.P.C. and fine of Rs.2000/- i/d

R.I. for six months. The learned Sessions Judge has imposed the same sentence on the appellant under Section 498-A of I.P.C. It appears that this has been done due to oversight. Under Section 498-A of I.P.C. the maximum sentence of imprisonment is three years R.I.. In this view of the matter a substantive sentence of three years R.I. under Section 498-A is imposed on the appellant. The fine amount on both the counts is maintained. The sentences of imprisonment shall run concurrently. The appellant shall be entitled to set off under section 428 of Cr.P.C. The appellant is on bail. The appellant shall surrender to his bail.

26. At this stage, the learned advocate for the appellant prays for four weeks time to surrender. On his request, four weeks time is granted to the appellant to surrender. Appeal is dismissed.